able minority hold the infant. *Crandall* v. *Slaid*, 11 Met. (Mass.) 288; *Albee* v. *Winterink*, 55 Ia. 184. Since the next friend is held in the first instance in England, the principal case seems clearly right in allowing this action over against the infant. This is law in America. *Voorhees* v. *Polhemus*, 36 N. J. Eq. 456. If the question were *res integra* it would seem best to hold the infant liable for costs primarily, as he is the real party in interest. The next friend is merely an officer of the court. See *Davies* v. *Lockett*, 4 Taunt. 765; *Klaus* v. *State*, 54 Miss. 644. The objection that the next friend can sue without the infant's consent raises a broad question of policy, whether he should be restrained by imposing liability for costs. He certainly should not be unduly discouraged. *Cross* v. *Cross*, 8 Beav. 455. The infant's interests seem sufficiently guarded by charging the next friend when suits are improper. *Pearce* v. *Pearce*, 9 Ves. Jr. 548; *Campbell* v. *Campbell*, 2 Myl. & C. 25. There is also the additional protection that the court may remove the next friend whenever his conduct appears questionable. *Robinson* v. *Talbot*, 78 S. W. 1108 (Ky.); *Barwick* v. *Rackley*, 45 Ala. 215.

CRIMINAL LAW — APPEAL — SENTENCE INCREASED ON APPEAL. — The Criminal Appeal Act of 1907 provided that on appeal by a prisoner, the higher court might quash the original sentence and pass another sentence warranted in law by the verdict (whether more or less severe). The prisoner appealed from a sentence of twelve years' imprisonment for shooting with intent to murder. *Held*, that the sentence can be increased to fifteen years. *Rex* v. *Simpson*, 74 J. P. 533 (Eng., Ct. Crim. App., Oct. 24, 1910).

Since the English courts have no power to declare unconstitutional an act of Parliament, the decision is unquestionably correct. In this country, such a statute would not deprive the prisoner of liberty without due process of law, for due process does not require any right to appeal. *Andrews* v. *Swartz*, 156 U. S. 272. Nor would it violate constitutional provisions against double jeopardy in those jurisdictions which allow conviction of a crime of higher degree (as murder) on a new trial after an appeal from conviction of a crime of lower degree (as manslaughter). *Trono* v. *United States*, 199 U. S. 521. See 19 HARV. L. REV. 300. And even where the contrary is held, a strong argument might be made for the constitutionality of an increased sentence for the same crime on appeal or on a new trial. The statute in question seems a most sensible one, for it discourages frivolous appeals without forbidding meritorious ones, and it partially remedies the defect in our system of criminal law of denying to the prosecution a right of appeal.

DANGEROUS PREMISES — LIABILITY TO TRESPASSERS — INJURY BY VICIOUS ANIMAL. — The plaintiff, while walking across the defendant's field, was injured by the defendant's horse, which the defendant knew to be vicious. The public had been accustomed to use the field as a short cut, but the defendant had at times objected. The defendant had given no notice of the animal's vicious character. *Held*, that the plaintiff can recover. *Lowery* v. *Walker*, 55 Sol. J. 62 (Eng., H. L., Nov. 9, 1910).

American courts have held the owner of a vicious animal liable in such cases on the theory that even an admitted trespass by the plaintiff was no defense. *Marble* v. *Ross*, 124 Mass. 44; *Loomis* v. *Terry*, 17 Wend. (N. Y.) 497. As to the condition of the premises ordinarily, the landowner owes the trespasser no duty. *Lary* v. *Cleveland, etc. Ry. Co.*, 78 Ind. 323. He must warn the licensee, however, of hidden dangers of which he knows. See *Maenner* v. *Carroll*, 46 Md. 193. The line between the licensee and the merely technical trespasser is often very shadowy. It may not be unreasonable, therefore, to hold the landowner to the duty of giving notice of danger. But the further consideration of expediency arises, — how far the landowner shall be restricted in the

beneficial user of his land for the protection of those who come upon it without right. When the presence of the trespasser is known, or ought to be known, the landowner must use due care not actively to injure him. *Herrick* v. *Wixom*, 121 Mich. 384; *Fearons* v. *Kansas City Elevated Ry. Co.*, 180 Mo. 208. But where the defendant does not himself bring force to bear on the plaintiff, the user is beneficial, and the danger contingent and remote, the wisdom of imposing such liability on the landowner is questionable.

DEAD BODIES — NATURE OF RIGHT IN. — The plaintiff shipped the body of her deceased son by the defendants' railway and, through a mistake of its servants, the body was put off at the wrong station, causing delay and expense to the plaintiff. This action was for damages on account of the defendants' negligence. *Held*, that the corpse is the property of the plaintiff, subject to limitations upon its disposition and use, and that she can recover damages for the expenses incurred. *Miner* v. *Canadian Pacific R. Co.*, 15 West. L. Rep. 161 (Alberta, Aug. 8, 1910). See NOTES, p. 315.

DEATH BY WRONGFUL ACT — DAMAGES IN STATUTORY ACTION — RIGHT OF WIFE NOT SUPPORTED BY HUSBAND TO SUE FOR HIS DEATH. — The plaintiff's husband deserted her shortly after their marriage and thereafter contributed nothing toward her support. He was killed by reason of the defendant's negligence, and the plaintiff brought an action as beneficiary under the death statute. The court directed a verdict for the defendant. *Held*, that the case should have been submitted to the jury. *Ingersoll* v. *Mackinac Ry. Co.*, 128 N. W. 227 (Mich.).

In such a case the rule in Michigan is to allow no recovery, if no pecuniary damage is shown. *Hurst* v. *Detroit City Ry.*, 84 Mich. 539. The weight of authority gives the plaintiff nominal damages, but the Michigan rule seems sounder. The death statutes are framed to recompense the beneficiaries, and if there is nothing for which to recompense them there should be no action. There is a pecuniary damage here in the loss of the action which the wife might have brought at any time against her husband to force him to support her. The loss of the possibility of bringing an action is enough to create a reasonable probability that damage has been suffered, and hence presents a question for the jury, even though, in the final event, they should find that the wife would probably never have recovered anything from the deceased. This view is supported by other authority. *Baltimore & Ohio R. Co.* v. *State*, 81 Md. 371; *International & Great Northern R. Co.* v. *Culpepper*, 19 Tex. Civ. App. 182.

DIVORCE — DEFENSES — DELAY. — A husband, after an invalid divorce, married again. After knowing of this marriage for ten years the first wife sued for a divorce, charging adultery with the second wife within the last year. By statute such a suit must be brought within five years of the discovery of the offense, or if the defendant committed the offense outside the state, within five years after his return. *Held*, that a divorce be granted. *Ackerman* v. *Ackerman*, 44 N. Y. L. J. 1059 (N. Y., Ct. App., Nov. 22, 1910).

The majority of the court regarded the continuous cohabitation with the second wife as a single offense, and only allowed the plaintiff to sue because the defendant had been continuously out of the state. Three judges, however, concurred in the result on the ground that each act of adultery constituted a new cause of action. Strict logic favors this view, but on the authorities the rule seems to be that when charged with notice of the defendant's adulterous intercourse, although that relation exists at the date of the suit, the plaintiff cannot set up specific acts in that continuing intercourse as a ground for divorce after the statutory period. *Valleau* v. *Valleau*, 6 Paige (N. Y.) 207; *Dutcher* v. *Dutcher*, 39 Wis. 651. The delay of the aggrieved party has allowed the